Opinion No. 51-5374

June 15, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Tom Wiley State School Superintendent Santa Fe, New Mexico

*{*54}* I am in receipt of your letter of June 12 in which you request a clarification of the meaning of the word "district" in that portion of the Teacher's Tenure Law (§ 55-1111, N.M.S.A.) which reads:

"A teacher properly certified and who has served a probationary period of three (3) consecutive years and holds a contract for the completion of a fourth consecutive year in a particular district * * *."

You mention that in some counties the word "district" is interpreted as an administrative unit and in others is interpreted as meaning the actual districts which are still in existence for the purpose *{*55}* of bonding, and maintaining school houses.

In my opinion, the word "district" as used in the portion of the Tenure Law quoted above is to be construed to mean an administrative unit.

In the case of a municipal school district, an independent rural school district, or a union high school district, it would make very little difference in the practical operation of the law whether the word be construed as meaning an administrative unit or merely a geographical subdivision. In each of such cases, the district is governed by a board whose authority extends only to the confines of that district. And it is abundantly clear in N.M.S.A. §§ 55-814, 55-902, and 55-1004 that such boards have the power to employ and to discharge teachers. Such boards are the "governing boards" of these particular districts as these words are used in the first sentence of § 55-1111.

It can be readily understood, however, why the construction which is given this word "district" is so important when we consider also the case of a teacher who is hired by a county board of education and who teaches in a rural school district under the jurisdiction of such board. If the word "district" is given its narrow construction, it would be necessary to hold that even a qualified teacher with many years of good service would lose his rights under the Tenure Law if he transferred to a different school district under the jurisdiction of the same board of education which hired him and which affected his transfer. In my opinion, such a construction was not the intent of the Legislature in the enactment of the Tenure Law.

To understand the whole subject more fully, it is necessary to consider some of the legislative history of the rural school district and its relation to the later enactment of the Tenure Law. Prior to 1917, the rural school district possessed a considerable degree of autonomy. It was a body corporate, being empowered to sue and to be sued, to

contract, and to hold property required for school purposes. (Code 1915, § 4844.) Its board of school directors possessed the usual powers of a corporation for public purposes and had, in effect, all the powers and privileges of a board of education. By the laws of 1917, Chapter 105, county boards of education were established and title to rural school district property was vested in such county boards. Between 1917-1923, the power to employ and dismiss school teachers in rural school districts vested in the boards of school directors and county boards of education jointly. (27 N.M. 250).

Finally, by the Laws of 1923, Chapter 148, the rural school districts lost their power to contract, to sue and to be sued, and their express recognition as corporations. The status of these rural school districts and their boards of school directors has remained substantially unchanged to this day, and it is clearly set out in § 55-807 N.M.S.A. that the county boards of education shall have supervision and control of these rural schools and districts, including the power to employ and discharge teachers. Under § 55-808 the county board may call upon a rural board of school directors for recommendations as to the employment of teachers, but such recommendations may be ignored by the county board. (A.G. Opinions, 1931-32, p. 85).

It is plain, therefore, that the "governing board" of each rural school district, as the term is used in the Tenure Law, is the appropriate county board of education. In my opinion, the Tenure Law was enacted for the protection of those qualified teachers who have rendered satisfactory service for a stipulated length of time under a particular administrative authority, i.e., the "governing board" which hired them. Again, its purpose *{*56}* is to give a right of full hearing and appeal to those teachers who are dismissed, but whose previous service, over a number of years, has been satisfactory to the board discharging them. In my further opinion, the Legislature did not intend to afford to the teachers the protection given by the Tenure Law, and at the same time to strip rural teachers of this protection if they transferred to a different rural school district, while remaining under the jurisdiction of the same county board of education.

The implications of a narrow construction of the word "district" are disturbing. It would be perfectly possible for a county board of education to plan to get rid of a teacher with tenure rights in one rural district by the simple expedient of asking him to transfer to another district under its jurisdiction, and then dismissing him. But whatever the motive behind the transfer, the result would clearly work a hardship on the teachers. In 50 Am. Jur., pp. 383-384, it is said:

"It is to be presumed that the Legislature did not intend a law to work a hardship or an oppressive result, and it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, the hardship which may follow one construction or the other may properly be considered. * * * * A construction should be avoided which would render the statute productive of unnecessary hardship, harsh or harmful consequences, or oppression, or arm one person with a weapon to impose hardships on another. * * * *."

I hope that this opinion sufficiently answers your inquiry and that it will prove helpful.